

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JIM TUCCI

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify) _____
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692

Brief description of cause:
Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

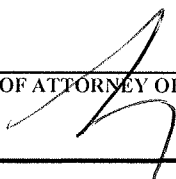
DOCKET NUMBER _____

Explanation: _____

DATE

1-10-12

SIGNATURE OF ATTORNEY OF RECORD



FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 711 South Edge Water Drive, Mesa, AZ 85208
 Address of Defendant: 507 Prudential Road, Horsham, PA 19044

Place of Accident, Incident or Transaction: _____
 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
 Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
 Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
 Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
 Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 USC § 1642
 (Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
 (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:
☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
☐ Relief other than monetary damages is sought.

DATE: 1-10-12

 Attorney-at-Law

57100

 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1-10-12

 Attorney-at-Law

57100

 Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Jim Tucci

v.

NCO Financial Systems, Inc.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

<u>1-10-12</u> Date	<u>Craig Thau Kimmel</u> Attorney-at-law	<u>Jim Tucci</u> Attorney for
<u>215-540-8888</u> Telephone	<u>877-788-2864</u> FAX Number	<u>kimmel@creditlaw.com</u> E-Mail Address

PLAINTIFF'S COMPLAINT

PARTIES

5. Plaintiff is a natural person residing in Mesa, Arizona.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. Also, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a) and Wenrich v. Cole, 2000 U.S. Dist LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road, Horsham, PA 19044.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

11. At all pertinent times hereto, Defendant was hired to collect a consumer debt and attempted to collect that debt from Plaintiff.

12. The debt arose out of transactions that were primarily for personal, family, or household purposes.

13. By way of background, several years ago, Plaintiff signed up for DIRECTV.

14. He was offered a 30-day, money back guarantee from DIRECTV.

15. Plaintiff only had service from DIRECTV for three and one-half days, and in that time, there were two (2) electrical storms, which caused his service to go out.

16. Dissatisfied with the service from DIRECTV, Plaintiff contacted DIRECTV to cancel his service.

17. DIRECTV sent Plaintiff several boxes to return the equipment, which he

1 packaged up and returned to DIRECTV.

2 18. Plaintiff disputes owing any money to DIRECTV.

3 19. Plaintiff never agreed to pay any fees if he cancelled his DIRECTV subscription
4 within the 30-day, money back guarantee period.

5 20. More than two (2) years later, beginning in October 2011, and continuing
6 through November 2011, Defendant contacted Plaintiff on a repetitive and continuous basis in
7 its attempts to collect an alleged debt owed to DIRECTV.

8 21. Defendant contacted Plaintiff, at least, once a day for more than a month on his
9 home telephone.

10 22. Defendant had the intent to annoy, abuse and harass Plaintiff when it was calling
11 him everyday for more than a month in an attempt to collect a debt.

12 23. In addition to calling Plaintiff, Defendant also sent Plaintiff seeking and
13 demanding payment of the alleged debt.

14 24. Specifically, on or about November 7, 2011, Defendant sent Plaintiff a letter
15 demanding payment of \$562.40. See Exhibit A, Defendant's November 7, 2011, letter to
16 Plaintiff.

17 25. In this letter, Defendant states, "**our** records indicate that your balance of \$562.40
18 is due in full" (emphasis added).

19 26. Defendant's use of the words "our records" mischaracterizes the source of the
20 information and leads Plaintiff to believe that Defendant has information, independent of that
21 information provided by the creditor of the account, regarding the alleged debt.

22 27. Moreover, upon information and belief, when Defendant utilized the term "our
23 records," it was referring to information received from another entity, as Defendant was solely
24 records," it was referring to information received from another entity, as Defendant was solely
25

1 hired to collect an alleged debt.

2 28. Finally, in its letter to Plaintiff, Defendant threatens to report the account to all
3 national credit bureaus if Plaintiff failed to resolve the account.

4 29. Upon information and belief, any contract Plaintiff signed with the original
5 creditor did not authorize the reporting of this matter to the credit reporting bureaus.

6 30. Moreover, at the time Defendant threatened to report the debt to the credit
7 reporting bureaus, it did not intend to take such action.

8 31. Defendant's threat to report the account to the credit reporting bureaus
9 overshadowed its notification to Plaintiff's rights to dispute the debt and/or request verification
10 of the debt.

11 32. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of
12 privacy.

14 CONSTRUCTION OF LAW

15 33. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
16 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
17 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
18 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
19 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
20 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

21 34. The FDCPA is a remedial statute, and therefore must be construed liberally in
22 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
23 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
24 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
25

1 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
 2 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
 3 2002).

4 35. The FDCPA is to be interpreted in accordance with the “least sophisticated”
 5 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
 6 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
 7 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for
 8 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
 9 and the fact that a false statement may be obviously false to those who are trained and
 10 experienced does not change its character, nor take away its power to deceive others less
 11 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
 12 ensures protection of all consumers, even naive and trusting, against deceptive collection
 13 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
 14 collection notices. Clomon, 988 F. 2d at 1318.

16 **COUNT I**
 17 **DEFENDANT VIOLATED THE**
 18 **FAIR DEBT COLLECTION PRACTICES ACT**

19 36. In its actions to collect a debt, Defendant violated the FDCPA in one or more of
 20 the following ways:

- 21 a. Defendant violated the FDCPA generally;
- 22 b. Defendant violated §1692d of the FDCPA when it harassed, oppressed or
 23 abused Plaintiff in connection with the collection of a debt;
- 24 c. Defendant violated §1692d(5) of the FDCPA when it caused Plaintiff’s phone
 25 to ring repeatedly or continuously with the intent to annoy, abuse, or harass

1 Plaintiff;

- 2 d. Defendant violated §1692e of the FDCPA when it used false, deceptive, or
3 misleading representations or means in connection with the collection of a
4 debt;
- 5 e. Defendant violated §1692e(2)(A) of the FDCPA when it falsely represented
6 the character, amount, or legal status of the debt it was attempting to collect;
- 7 f. Defendant violated §1692e(8) of the FDCPA when it threatened to disclose
8 credit information to third parties that it knew or should have known was
9 false;
- 10 g. Defendant violated §1692f of the FDCPA when it used unfair and
11 unconscionable means in connection with the collection of a debt; and
- 12 h. Defendant violated §1692f(1) of the FDCPA when it attempted to collect an
13 amount that was not authorized by the agreement creating the debt or
14 permitted by law.

15
16 WHEREFORE, Plaintiff, JIM TUCCI, respectfully prays for a judgment as follows:

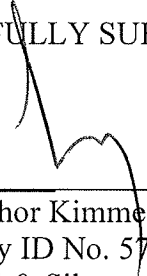
- 17 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- 18 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
19 15 U.S.C. § 1692k(a)(2)(A);
- 20 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
21 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- 22 d. Any other relief deemed appropriate by this Honorable Court.
- 23
24
25

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, JIM TUCCI, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: 1-10-12

By: 
Craig Thor Kimmel
Attorney ID No. 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (877) 788-2864
Email: kimmel@creditlaw.com



PO BOX 4906
DEPT 09
Trenton, NJ 08650



Calls to or from this company may be monitored
or recorded for quality assurance.

NCO FINANCIAL SYSTEMS, INC.

507 Prudential Road, Horsham, PA 19044

1-877-273-3495

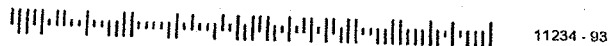
OFFICE HOURS(ET):

8AM-9PM MON THRU THURSDAY

8AM-5PM FRIDAY

8AM-12PM SATURDAY

Nov 7, 2011



11234 - 93

UQK833

JIM P TUCCI

CREDITOR: DIRECTV

REFERENCE 9697

CURRENT BALANCE DUE: \$ 562.40

Your Account May Be Credit Reported!

Our records indicate that your balance of \$562.40 is due in full. It is our intention to work with you to resolve this collection account. However, subject to your dispute and validation rights provided below, if you fail to resolve this collection account, we may report the account to all national credit bureaus.

To discuss this account, please call 1-877-273-3495. Mail payment to: DIRECTV, P.O. BOX 78626, PHOENIX, AZ 85062-8626. To assure proper credit, please return the bottom portion of this letter, or a copy thereof, with your payment.

You may also make payment online at directv.com.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This is a communication from a debt collector.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT (MAKE SURE ADDRESS SHOWS THROUGH WINDOW)

Date of Turnover: 11/05/11

Reference #

70129697

Current Balance Due

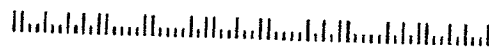
\$ 562.40

JIM P TUCCI

Payment Amount

\$

Make Payment To:



DIRECTV

P O BOX 78626

Check here if your address or phone number has
changed and provide the new information below.

